Supreme Court, U.S.
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No. 06-275

In The

Supreme Court of the United States

IN RE: LANAS EVANS TROXLER

On Petition For Writ Of Mandamus
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED FOR REVIEW

Does the United States Department of Justice have the right to misrepresent illegal and erroneous tax law matters to a Grand Jury to obtain an indictment against a Citizen of the United States of America?

PARTIES TO THE PROCEEDING

The Parties to the proceeding are:

LANAS EVANS TROXLER, an individual, on behalf of himself;

THE UNITED STATES OF AMERICA

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JURISDICTION

This Honorable Court has jurisdiction to issue extraordinary writs under 28 U.S.C. § 1651(a) and U.S. Supreme Court Rule 20, (especially) "except in certain narrowly defined circumstances" where extreme violations have occurred.

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

Constitution of the United States of America, Amendment V, Due Process and Equal Protection Clause

STATEMENT OF THE FACTS

The Petitioner was indicted by a Federal Grand Jury concerning seventeen (17) counts of various alleged Internal Revenue Law violations, some of which were filed on

October 12, 2005 by the U.S. Attorney. (See Appendix B). The Petitioner reviewed the indictment and found that the Introduction to *the Indictment misrepresented several illegal and erroneous law matters* which were incorporated into each count of the indictment. The result being that the Petitioner has been charged with non-existent crimes or constructive criminal offenses that do not exist except in the minds of the prosecutors in this case. The Petitioner filed a Motion to Dismiss under Fed.R.Crim.P. 12(b)2 and 12(b)(3)(B). There was a motions hearing on this said motion and others on December 15, 2005. *The Honorable District Court denied Petitioner's Motion to Dismiss under Fed.R.Crim.P. 12(b) with a verbal and written order (See Appendix E). A Petition for Writ of Mandamus was filed with the United States Court of Appeals – Fifth Circuit which was denied or dismissed on July 11, 2006 (See Appendix A).*

STATEMENT OF THE ISSUES

1. Whether the Honorable Appellate Panel should have considered the Petition for Writ of Mandamus an extraordinary cause in this case.

2. Whether the Honorable Appellate Panel erred when it refused to dismiss Petitioner's Grand Jury Indictment which does not charge a criminal offense.

3. Whether Petitioner's rights under the 5th Amendment due process of law and equal protection of the law have been violated and whether relief needs to be granted.

STATEMENT OF RELIEF SOUGHT BY PETITIONER

By this Petition for Writ of Mandamus, *Petitioner seeks an order from this Honorable Court directing the Honorable Appellate Panel or District Court to dismiss the Grand Jury Indictment against the Petitioner for failure to charge a criminal offense.*

REASONS WHY THE WRIT SHOULD ISSUE

The law and supportive court decisions show that the said *Honorable District Court did not have jurisdiction or authority* to continue the criminal case against the Petitioner with a fatally defective Grand Jury Indictment.

The Fifth Circuit Appellate Court Panel has incorrectly, erroneously and unjustly denied Petitioner's Petition for Writ of Mandamus to the Fifth Circuit from the District Court. The Panel refers to two (2) cases in an effort to justify their decision. The two (2) cases are:

In re Willy, 831 F.2d 545 at 549 (5th Cir. 1987), and

Will v. United States, 389 U.S. 90 at 96 (1967).

These same cases support the reason for this extreme extraordinary Petition for Writ of Mandamus. In this case, there is unwarranted judicial action. The Petitioner is entitled to a speedy resolution of the charges against him. This Petition has the effect of a total dismissal. Irreparable injury has already occurred and will continue. *This case represents more than a defect in a grand jury indictment.*

This case represents an extreme extraordinary situation for *several* reasons. *This citizen taxpayer has never been audited by the IRS. He has filed tax returns prepared by knowledgeable licensed professionals. The government prosecutor had previously attempted to obtain a criminal indictment against the Petitioner on two (2) different other occasions with no success.*

The IRS has never made a civil legal determination that there is any tax deficiency because no Notice of Deficiency (90 day letter) was ever sent to the Petitioner. This means that *no legal income tax assessment was ever made* against the taxpayer-Petitioner for the tax years utilized in the Grand Jury Indictment. *No legal notices of taxes due and owing were sent* to the Petitioner. *No Due Process Hearings or Tax Court trials were allowed to Petitioner* in this case.

THE INCORRECT LEGAL STANDARDS WERE PRESENTED AND INCLUDED IN THE GRAND JURY INDICTMENT

Item #2 in the Introduction of the Indictment states: "At all times material to this indictment: *2. a fundamental principle of tax law is that income is taxed to the individual who earned such income.*" This statement is a half-truth or false statement. If the only legal and tax entities in the United States were individuals, this may be a true legal standard. But, several other legal and tax entities or persons are recognized under the Internal Revenue Code and numerous court decisions. IRC § 7701(a)(1) states that:

> (1) Person. – The term "*person*" shall be construed to mean and include an *individual*, a *trust, estate, partnership,* association, company or *corporation.* And IRC § 7701(a)(14) states that: (14) Taxpayer. – The term "*taxpayer*" means any *person* subject to any internal revenue tax.

It is common knowledge, and this court must take judicial notice, that income is taxed to the "person" (i.e., individual, trust, estate, partnership, association, company, corporation) who earned such income. *The individual is but only one (1) of the several persons that income is taxed to.* Income may also be taxed to a trust (Form 1041), and estate (Form 1041), a corporation (Form 1120). Trusts, estates and corporations are other legal and tax persons that income could be taxed to. ***Danny Williams, IRS Special Agent, after obtaining information for the purpose of securing a search warrant, admitted by written affidavit that IRS Form 1065 returns were filed for each of the business entities. (See attached Appendix D).***

When the grand jury was instructed that, "income is taxed to the individual who earned such income," *without* explaining to them the legal definition of "person" (i.e., that definition being an individual, a trust, estate, partnership, association, company, corporation), the grand jury was, by and through this omission on the definition of "person," presented a totally misleading and misunderstanding of the tax law in the United States upon which to base their decision. Subsequently, *a serving grand juror became bound by this erroneous legal standard in finding probable cause.* Presentation of full facts most certainly would have rendered a totally different outcome from the Grand Jury. For example, if an individual were operating a business as a sole proprietor, he would set up a one-man

corporation under state law and at the end of the next year he would file a corporate 1120 tax return for the income. Under this scenario, he could then be indicted under this legal standard because he would not have included that income on his individual 1040 tax return.

Item #3 in the Introduction of the Indictment states:

> At all times material to this indictment 3. Two essential elements of abusive trust tax evasion schemes are (1) whether the taxpayer intended to escape taxation by assigning or transferring earnings to another entity; and (2) whether the taxpayer continues to maintain dominion and control over the assets after the transfer to the entity.

This legal standard is also completely false and erroneous. A taxpayer can intend to escape taxation by assigning or transferring earnings to another entity if that entity is a viable business or has other business purposes in addition to escaping taxation. Also, the taxpayer may continue to maintain dominion and control over the assets after the transfer to the entity that is a viable business or has other business purposes in addition to escaping taxation. This is the correct legal standard as decided by numerous court decisions, but was not the legal standard presented to the grand jury in the indictment. *It is never within the discretion of the prosecutor, grand jury or the court to make determinations premised on incorrect legal standards. Koon v. United States*, 135 L. Ed. 2d 392 (1996); *United States v. Castro*, 129 F.3d 226 (1st Cir. 1997). Therefore, *Counts I through XVII must be ruled to be defective*. Again, the government has intentionally misstated the law of the United States concerning income taxation in the Troxler Indictment. Item #2 of the Introduction states that:

> 2. A fundamental principle of tax law is that income is taxed to the *individual* who earned the income.

(Emphasis added)

The correct fundamental principle of tax law as stated by the courts is as follows:

> . . . income is taxed to the *person or entity* earning the income.

(Emphasis added) *Lucas v. Earl*, 281 U.S. 111, at 114-115 (1930); *Johnson v. United States*, 698 F.2d 372 at 374 (9th Cir. 1982).

There is a huge legal and tax difference between the term "individual" and the terms "person or entity." The term "individual" is only one of the various persons listed in IRC § 7701(a)(1) along with several other persons or entities that are separate tax filing and paying persons or entities. This misinformation and misunderstanding of the tax law in the United States means that the wrong legal standard was used by the Grand Jury in finding probable cause that a crime may have been committed. The Grand Jury was illegally bound by the government in the Introduction to Indictment to tax all income to an individual regardless of who actually earned it which is totally incorrect under the law. In other words, the correct legal standard is that A, B, C and D are separate tax entities. The Grand Jury was misled to believe that A was the only tax person or entity. Defendant Troxler legally set up C which received the income. Since C is not A, the Grand Jury had no choice but to indict the defendant illegally and erroneously contrary to real law. *This illegal action by the government amounts to fraud, trickery and deceit on the Grand Jury, this Honorable Court and the defendant.*

In addition, the government has intentionally misstated the law of the United States in the Troxler Indictment. Item #3 of the Introduction states that:

> 3. Two essential elements of abusive trust tax evasion schemes are: (1) Whether the taxpayer intended to escape taxation by assigning or transferring earnings to another entity; and (2) whether the *taxpayer* continues to maintain dominion and control over the assets after the transfer to the entity.

Again, this is a total misstatement and misunderstanding of the tax law. The correct position was stated in the Tax Court case of *Perry R. Bass and Nancy Lee Bass v. Commissioner of Internal Revenue Service*, 50 T.C. 595 (1968), which states:

> *The question presented is the familiar problem of form versus substance. The ground rules for the contest have been established by innumerable court decisions, which make it clear that a taxpayer may adopt any form he desires for the conduct of his business and that the chosen form cannot be ignored merely because it results in a tax saving. However, to be afforded recognition, the form the taxpayer chooses must be a viable business entity, that is, it must have been formed for a substantial business purpose or actually engage in substantive business activity. See, e.g., Moline Properties, Inc. v. Commissioner, 319 U.S. 436 (1943); National Carbide Corp. v. Commissioner, 336 U.S. 422 (1949); National Investors Corp. v. Hoey, 144 F.2d 466 (C.A. 2 1944); Aldon Homes, Inc., 33 T.C. 582, 595-597 (1959).*

(Emphasis added)

If defendant Troxler had any other legitimate business motives or purposes or actually engaged in substantive

business activity along with the intention to escape taxation, the entities must be recognized for income tax purposes. According to the government's introduction instruction to the Grand Jury, if one of the motives of defendant Troxler was to escape taxation, whether or not there were other business purposes or activities, the Grand Jury was required to indict him contrary to the real law.

Whether the entities involved lacked economic substance and were therefore shams is a factual question to be decided on the basis of the facts involved. *United States v. Cumberland Public Service Co.*, 338 U.S. 451, 457, 70 S. Ct. 280 (1950). *The Troxler indictment alleges no facts addressing the question of whether there was any substance or not.* The government was aware of various business activities that would have qualified the entities as viable businesses, but that critical information and those facts were deliberately not disclosed to the Grand Jury.

Dominion and control over assets after the transfer are not essential elements to determine whether there exists a viable business entity for income tax purposes. If it has been determined that the entity is *not* a viable tax entity, then the dominion and control determination is used to determine who the individual taxpayer is who will be assessed the income. The fact that an individual controls and has dominion over a corporation as a sole director does not make him or her the person liable for the income tax on income of the corporation. With a trust, the trustee can have broad powers to manage and control the trust property. Even when the IRS makes much of these powers, the courts attribute them no significance whatsoever. *Markham v. Fay*, 74 F.3d 1347 (1st Cir. 1996). *The Introduction of the Indictment is re-alleged and incorporated in all seventeen (17) counts making the entire indictment null and void.* There are several misleading and

missing legal and fact elements in all counts of the Troxler indictment where matters of law are misstated.

In *Honea v. United States*, 344 F.2d 798, 803-04 (5th Cir. 1965):

> . . . it is not enough that defendant should be prosecuted for violating a particular statute; rather, *the indictment must also allege every element of the offense.* Only in this way is any assurance furnished that the grand jury found probable cause to believe the defendant in fact committed acts constituting the offense in question.

344 F.2d 798.

> The failure of indictment to allege all elements of the offense *may not* be cured by evidence or instructions at trial, nor by . . . a bill of particulars, and indictment may not be actually or constructively amended by adding material allegations to the offense charged or of another offense.

344 F.2d 803-04.

To be sufficient, an indictment must allege each element of the offense; if it does not, it fails to charge that offense. *United States v. Cabrera-Teran*, 168 F.3d 141 at 143 (5th Cir. 1999); *United States v. Guzman-Ocampo*, 236 F.3d 233 at 236 (5th Cir. 2000).

Petitioner in this instant case was charged with crimes that do not exist under the introduction and statutes cited in the indictment and therefore, *all counts are fatally defective. United States v. Miller*, 161 F.3d 977 at 982 (6th Cir. 1998); *Government of Virgin Islands v. Greenidge*, 600 F.2d 437 at 439, note 2 (3rd Cir. 1979).

The Honorable District Court verbally denied said Motion to Dismiss at the motions hearing on December 15, 2005 (See Appendix E). The Honorable District Judge stated at the hearing, "Well, that really goes to the merits, the fact that you think you're not guilty . . . ," in response to the argument that the Introduction of the Indictment gives the incorrect law to the Grand Jury.

The Petitioner has asked the Honorable District Judge to reconsider his statement in the context of the effect of the incorrect law that was presented to the Grand Jury. Such an incorrect interpretation of the law makes every business utilizing a separate artificial entity or person to conduct business and file tax returns guilty under the Troxler indictment. The Petitioner is *not* guilty of an alleged federal criminal offense, but he is "guilty" of a charge that legitimate business entity income was not reported on his individual 1040 tax return as are several million other taxpayers who operate separate business entities and report business income on those entities/tax returns. The Honorable District Court needs to understand that the Troxler Grand Jury charge or requirement of having to report legitimate business entity income on an individual 1040 tax return is *not the law in the United States.* In other words, it is an erroneous and illegal charge or requirement.

Thus, *the Grand Jury was charged to follow the bogus law* as given by the U.S. Attorney and had no choice but to find probable cause because the fact that the Petitioner did not report his legitimate business income on his individual 1040 income tax return is a true fact. *He did legally and correctly report the legitimate business income on the appropriate business tax return as determined by*

IRS Code and numerous court decisions. (See Appendix D).

This fact is not involved with the "merits" of this case but is involved with the correct interpretations and determination of the law. The Troxler Grand Jury was required by their oath to use a misinterpretation of the law which caused an incorrect and illegal application to the facts. In other words, *the Grand Jury created a non-existent law and applied it to true facts making an illegal and incorrect probable cause determination contrary to the real law.*

We know that the above analysis is correct because the Department of Justice issued a press release on October 31, 2005 (See Appendix F) stating that:

> Troxler and his clients retained full control over the assets, businesses, and income earned from them, *and the income was taxable and should have been reported on their respective Federal individual and business income tax returns.*

(Emphasis added)

This is exactly the posture taken by Petitioner who did indeed report "income that was taxable on respective Federal and individual and business income tax returns." But, Department of Justice in its desire to indict Troxler, misled the Grand Jury by not presenting true wordings and facts, i.e., "income can be taxed to individual and/or separate business legal and tax entity." The Department of Justice, instead, misstated and misled by saying that taxed income only goes to an individual on a 1040 tax return, which is a blatant untruth in its omission of full facts. In addition, the courts have ruled in several cases that income can be taxed to an individual and/or separate

legal and tax entities, e.g., *United States v. Romero*, 640 F.2d 1014 (9th Cir. 1981) which states:

> . . . the reference to the word 'person' in section 7203 of Title 26 is intended to encompass not only all individuals subject to income tax liabilities, *but also legal entities liable for tax payments or required by law and regulations to make a tax return*. . . . See *Lucas v. Earl*, 281 U.S. 111; *Roberts v. Commissioner*, 176 F.2d 221, 225. . . . The trial judge acted properly with respect to his comments and instructions regarding this matter of law. See *United States v. Miller*, 634 F.2d 1134. . . .

(Emphasis added)

We also know that the IRS Special Agent and government knew that they were presenting bogus and illegal information and law to the Grand Jury.

The Petitioner had obtained an "Affidavit in Support of Application for Search Warrant" executed by Daniel Williams, IRS Special Agent, before a United States Magistrate Judge. Besides outlining his qualifications, expertise and credentials, Mr. Williams states on page 3 of the Affidavit:

> Based on my training and experience, I also know that:
>
> a. It is an established principle of federal tax law that *income is taxed to the person who earns . . . such income.*

(Emphasis added) (See Appendix G).

Mr. Williams used the correct version using the term "person" to obtain a search warrant, but deceived the

grand jury into indicting Troxler by using the terms "individual."

The term "individual" does not have the same legal meaning as the term "person."

In the *American Heritage Dictionary*, the term "individual" is defined as a "single human being," and the term "person" is defined in law as a human being or organization with legal rights and duties.

According to *Black's Law Dictionary*, 5th Edition, the term "individual" as a private or natural person as distinguished from a partnership, corporation, or association, and the term "person" is defined as a human being (i.e. natural person), though by statute terms may include firms, labor organizations, partnerships, associations, corporations, legal representatives, and trustees.

And according to the IRS Code, Title 26 U.S.C. § 7701(a)(1), the term "person" is defined as an individual, a trust, estate, partnership, association, company or corporation. The term "individual" is not defined in the IRS Code; therefore, the dictionary definition would apply.

Upon reviewing the definitions of the terms "individual" and "person," we can easily understand why a prosecutor would have an easier task in obtaining an indictment against an "individual" by excluding other types of persons who may be involved. The grand jury would not have to even consider the fact that income may have been earned by another "person" other than an "individual" only. All income would then be earned by the individual when the truth is that the income may have been legally earned by a trust, partnership, association, company or corporation.

By using the term "individual" in the bogus tax law principle presented instead of the term "person," the grand jury would not even have had the opportunity to decide whether the income was in fact earned by the said trust, partnership, association, company or corporation because the prosecutor would have warned the grand jury to follow the law presented by their oath.

Now that we know that Petitioner Troxler was charged with violation of the tax law principle that, "*income is taxed to the person who earns such income,*" according to Mr. Williams' Affidavit, we can compare this to the Indictment and find the fatal defects.

Therefore, *the Troxler Indictment has several missing essential legal elements* besides the element that *income is taxed to the individual who earns it* as listed below:

1) Income is taxed to the trust who earns it;

2) Income is taxed to the partnership who earns it;

3) Income is taxed to the association who earns it;

4) Income is taxed to the corporation who earns it.

All of the above missing essential legal elements were missing using the tax law principle "*income is taxed to the person who earns it.*"

Even one (1) missing essential legal element of a count in an Indictment results in automatic dismissal for failure to charge a criminal offense. United States v. Pupo, 841 F.2d 1235 (4th Cir. 1988); *United States v. Tran*, 234 F.3d

798 (2nd Cir. 1999); *United States v. Cabrera-Teran*, 168 F.3d 141 at 143 (5th Cir. 1999).

Therefore, the Troxler Grand Jury could not have found probable cause that a criminal violation was committed because the Grand Jury jurors were not correctly informed of what the true and correct law and principles were concerning income taxes in the United States.

This case and the Grand Jury Indictment must be dismissed because the following criminal legal principles of law would definitely apply in this case.

1. Due Process requires that a person be given fair notice as to what constitutes illegal conduct so that he may conform his conduct to requirements of the law. *United States v. Harris*, 942 F.2d 1125 (1st Cir. 1991); *Omernick v. Department of Natural Resources*, 301 N.W.2d 437 (Wis. 1981); *Butz v. Economou*, 438 U.S. 478 (1978).

2. The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited. *United States v. Walker*, 137 F.3d 1217 (10th Cir. 1998); *Winter v. New York*, 333 U.S. 507 (1948).

3. There can be no constructive offenses; that before a man can be punished, his case must be plainly and unmistakably within the statute. *United States v. Lacher*, 134 U.S. 624 (1890); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 104 S. Ct. 2778 (1984); *American Iron and Steel Institute v. Natural Resources Defense Council, Inc.; D. Ruckelhaus v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778 (1984).

4. The "rule of lenity" is a principle of statutory construction which provides that criminal statutes must be strictly construed, and any ambiguity be resolved in favor of lenity. *United States v. Bass*, 404 U.S. 336, 92 S. Ct. 515 (1971).

5. The government must show that the law clearly prohibited the conduct. *United States v. Lacher*, 134 U.S. 624 (1890).

6. Businessmen must not be left to guess the meaning of regulations. *Winter v. New York*, 333 U.S. 507 (1948).

7. In criminal prosecution, lack of clarity alone is enough to resolve the doubt in favor of the defendant. *United States v. Mersky*, 361 U.S. 431, 80 S. Ct. 459 (1960).

8. Vice of vagueness in criminal statutes is treachery. *United States v. Cardiff*, 344 U.S. 174, 73 S. Ct. 189 (1952).

9. *District Court must dismiss charge prior to trial if it fails to allege facts which constitute a prosecutable criminal offense.*

10. Crimes are not to be created by inference. *United States v. Lacher*, 134 U.S. 624 (1890).

Mandamus is available to any Petitioner who has a clear, legal, substantial and immediate right to have this Court compel the District Court to perform their duties where the duties are clear and ministerial. The Petitioner has no other meaningful or reasonable adequate and speedy remedies. This Petition for Writ of Mandamus and the one filed with the Federal Appellate Court could not be premature on the grounds that the Petitioner has not

exhausted all of his administrative remedies because there are no other administrative remedies available.

The order, if left as is, will severely prejudice the Petitioner, critically affecting the disposition of this case and *would be a direct violation of Petitioner's due process of law under the 5th Amendment.*

This Petition for Writ of Mandamus is not for the purpose of delay, but serves to raise a substantial question of law and fact. If decided favorably for Petitioner, reversal of the Federal District Court's order will result. *Mandamus is available to any Petitioner who has a clear, legal, substantial and immediate right to have this Court compel the District Court to limit their jurisdiction and authority where the law is clear.*

CONCLUSION

When there is a fatally defective Grand Jury Indictment with incorrect statements of law and facts with the fraud, trickery and deceit on the part of the IRS and government, the Honorable District Court *does not have the authority to proceed* with the case and only has jurisdiction to dismiss the case and the defective Grand Jury Indictment. On February 3, 2006, Mr. William McMurrey, Assistant United States Attorney terminated his appearance *without explanation to the Petitioner.*

If not decided in favor of the Petitioner, this case will reflect on the judicial integrity of the courts and the entire legal system in this country. No one would be safe from the selective prosecution of the IRS and Justice Department. Recently, there have been hearings before Congress concerning offshore tax shelter abuses involving multi-billions of dollars. The question is, "Why haven't those

persons been indicted criminally before the administrative civil processes are utilized?"

THEREFORE, IT IS PRAYED that said Honorable District Judge and Appellate Panel be ordered to reverse their orders of December 15, 2005 and July 11, 2006 and to order that this case and the Grand Jury Indictment be dismissed with prejudice.

Respectfully submitted,

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APPENDICES

Appendix "A" Fifth Circuit Denial (FRCrimP-12(b)).....App. 1

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10489
USDC No. 3:05-CR-00263

IN RE: LANAS EVANS TROXLER,

Petitioner.

Petition for a Writ of Mandamus
to the United States District Court
for the Northern District of Texas

(Filed Jul. 11, 2006)

Before JOLLY, PRADO, and OWEN, Circuit Judges.

PER CURIAM:

Lanas Evans Troxler, a criminal defendant awaiting trial on charges of tax fraud, has filed in this court three pro se petitions for a writ of mandamus. In this petition, Troxler, who is representing himself in the criminal proceedings, argues that the district court erred in denying his FED. R. CRIM. P. 12(b)(2) motion to dismiss the indictment.

The mandamus remedy is an extraordinary one, granted only in the clearest and most compelling cases in which a party seeking mandamus shows that no other

adequate means exist to attain the requested relief and that the right to the issuance of the writ is "clear and indisputable." *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). Mandamus is not a substitute for appeal. *Id.* Particularly in criminal cases, "appellate review should be postponed, except in certain narrowly defined circumstances, until after final judgment has been rendered by the trial court." *Will v. United States*, 389 U.S. 90, 96 (1967).

The sufficiency of an indictment can be examined adequately in an appeal from a final judgment. *United States v. Floyd*, 992 F.2d 498, 500 (5th Cir. 1993). The cases Troxler cites to support our exercise of mandamus jurisdiction are from other circuits and are factually inapposite. Mandamus relief is not appropriate.

Although Troxler is proceeding pro se in his mandamus petitions and in district court, that court has appointed standby counsel to assist Troxler. We warn Troxler that, should he again abuse the writ of mandamus by attempting to challenge unappealable interlocutory orders, we will not hesitate to sanction him by imposing monetary sanctions and/or by restricting his access to the courts.

PETITION DENIED: SANCTION WARNING ISSUED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

THE UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 305-CR-0263K
	§	
LANAS EVANS TROXLER	§	

The Grand Jury Charges:

INDICTMENT

(Filed Oct. 12, 2005)

Introduction

At all times material to this indictment:

1. The Internal Revenue Service (IRS) of the Department of the Treasury was an agency of the United States government responsible for the collection of federal income taxes.

2. A fundamental principle of tax law is that income is taxed to the individual who earned such income.

3. Two essential elements of abusive trust tax evasion schemes are: (1) whether the taxpayer intended to escape taxation by assigning or transferring earnings to another entity; and (2) whether the taxpayer continues to maintain dominion and control over the assets after the transfer to the entity.

4. Defendant **Lanas Evans Troxler** was a resident of Dallas, Texas, who did business as Trust Management

Services, Troxler Insurance Agency, Contingent Liability Services, Troxler Financial Services, and Troxler Advisory

* * *

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	)	
VS.	)	CRIMINAL NO. 3:05-CR-263-K (01)
LANAS EVANS TROXLER	)	

ORDER

Before the Court is Defendant's "Motion for Reconsideration" filed January 13, 2006. In his motion, the defendant requests reconsideration of the Court's December 15, 2005 oral order denying defendant's "Motion to Dismiss Under FRCrimP 12(b)(2)". The Court, having considered Defendant's "Motion for Reconsideration", finds that it should be **DENIED**.

SO ORDERED.

Signed February 15th, 2006.

/s/ Ed Kinkeade
ED KINKEADE
UNITED STATES
DISTRICT JUDGE

APPENDIX D

United States District Court

NORTHERN JUDICIAL DISTRICT OF TEXAS

In the Matter of the Search of (Name, address or brief description of person, property or premises to be searched) One Galleria Tower, Fifth Floor, Suite 500 13355 Noel Road Dallas, Texas (more particularly described in Attachment A)	APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT CASE NUMBER: 3-02-192MJ (FILED JUN. 26, 2002)

I Daniel Williams being duly sworn depose and say:
Special Agent, Criminal Investigation
I am a(n) Internal Revenue Service, U.S. Treasury
(Official Title) and have reason to believe
that ☐on the person of or ☒on the property or premises known as (name, description and/or location)
See Attachment A

in the Judicial District of Northern Judicial District of Texas there is now concealed certain property, namely
See Attachment B

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

Property that constitutes evidence of the commission of a criminal offense concerning a violation of Title 26 United States code, Section(s) 7201, 7206(1), 7206(2), 7212
The facts to support a finding of Probable Cause are as follows:

See attached affidavit

Continued on the attached sheet and made a part hereof.
☒ Yes ☐ No

/s/ Daniel Williams
Signature of Affiant

Sworn to before me, and subscribed in my presence

June 26, 2002 at Dallas, TX
Date City and State

United States Magistrate Judge | Wm. F. Sanderson, Jr.
Name and Title of Judicial Officer | Signature of Judicial Officer

* * *

TROXLER operates the following financial consulting businesses: Trust Management Services, Troxler Insurance Agency, Contingent Liability Services, Troxler Financial Services, ReSecurity First Legal Association, and Troxler Advisory Services. IRS records reveal that each of those businesses were established as United States Contractual Companies (USCC). On September 7, 2000, TROXLER told IRS undercover agents (UCAs) that he created the USCC as a form of business ownership For taxable years 1997 through 2000, TROXLER filed IRS Forms 1065, U.S. Partnership Return of Income, for each of his business entities. TROXLER, or his wife Marsha Troxler, signed each of those tax returns as Managing Director for the businesses.

Since partnership tax returns are flow-through entities, all income and losses are distributed to the partners. IRS records reveal that TROXLER's businesses distributed their business profits to various domestic and foreign partners. The partners and their percentage of ownership are shown below:

	1997	1998	1999	2000
Wages	$19,272.00	$19,272.00	$19,272.00	$19,272.00
Other Income	$32,656.00	$1,071.00	$24.00	$2,085.00
Adjusted Gross Income	$51,928.00	$20,343.00	$19,296.00	$21,357.00
-Itemized Deductions	($17,924.00)	($16,472.00)	($11,736.00)	($18,661.00)
-Exemptions	($7,950.00)	($8,100.00)	($8,250.00)	($8,400.00)
=Taxable Income	**$26,054.00**	**($4,229.00)**	**($690.00)**	**($5,704.00)**
Income Tax	$3,906.00	0.00	0.00	0.00
Adoption Credit	($3,906.00)	0.00	0.00	0.00
Earned Income Credit	0.00	($982.00)	($1,223.00)	($965.00)
Tax Due / (Refund)	0.00	($982.00)	($1,223.00)	($965.00)

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	3:05-CR-263-K
VERSUS	DALLAS, TEXAS
LANAS EVANS TROXLER	DECEMBER 15, 2005

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ED KINKEADE,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: WILLIAM McMURREY
Assistant United States Attorney
UNITED STATES DEPARTMENT OF JUSTICE
NORTHERN DISTRICT OF TEXAS
U.S. Courthouse, Room 300
1100 Commerce Street
Dallas, Texas 75242-1699
214-659-8600

For the Defendant: LANAS EVANS TROXLER
214-597-2350

Court Reporter: RANDY M. WILSON
PAMELA J. WILSON
1100 Commerce, Room 1625
Dallas, Texas 75242
214-766-9150

* * *

MR. TROXLER: Right.

THE COURT: – to help me find books and to find certain things. This will be a resource person for you, even though they're not your lawyer.

Does that make sense?

MR. TROXLER: Yes, sir.

THE COURT: If you choose to use them. If you choose not to, that's fine. But I'm going to have that resource person there and available.

MR. TROXLER: Could I ask you one more time?

THE COURT: Yes, sir.

MR. TROXLER: Is – is the motion on the 12(b) here the –

THE COURT: Overruled. It's all overruled.

MR. TROXLER: It's all –

THE COURT: All of your motions to dismiss are overruled, or denied. I'm not going to dismiss it.

MR. TROXLER: So the issue of the second sentence in the indictment is irrelevant then or?

THE COURT: I'm not saying it's not relevant. I'm just saying I've ruled against you on it.

MR. TROXLER: Okay. Okay.

THE COURT: Some wiser heads above me may think you're correct and I'm wrong –

MR. TROXLER: Okay.

* * *

APPENDIX F

[SEAL] **U.S. Department of Justice**

United States Attorney
Northern District of Texas

1100 Commerce St., 3rd Fl.
Dallas, Texas 75242-1699

Telephone
(214)659-8600
Fax (214) 767-0978

FOR IMMEDIATE RELEASE
CONTACT: 214/659-8600
www.usdoj.gov/usao/txn

DALLAS, TEXAS
OCTOBER 31, 2005

DALLAS INVESTMENT ADVISOR INDICTED BY FEDERAL GRAND JURY

FACES 59 YEARS IMPRISONMENT

United States Attorney Richard B. Roper announced today that Dallas resident, Lanas Evans Troxler, was arrested last week on various tax charges outlined in a 17-count indictment returned by a federal grand jury in Dallas earlier this month. Troxler appeared before United States Magistrate Judge Paul Stickney on Friday and was released from pre-trial custody but was placed on electronic monitoring and ordered to comply with other restrictions severely limiting his movement. He will appear before the Honorable Ed Kinkeade, United States District Judge, on November 3, 2005, for arraignment.

According to the indictment, Troxler was a licensed investment advisor and estate planner, who sold financial and tax advice to his clients. He did business as Trust Management Services, Troxler Insurance Agency, Contingent Liability Services, Troxler Financial Services and Troxler Advisory Services. Troxler operated these businesses from his office in Dallas.

The indictment charges Troxler with one count of corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue laws, in violation of 26 U.S.C. 7212(a); four counts of attempting to evade and defeat tax, in violation of 26 U.S.C. 7201; and 12 counts of assisting in the preparation and presentation of false and fraudulent tax returns, in violation of 26 U.S.C. 7206(2). The tax loss from Troxler's activities is in excess of $600,000.

The indictment alleges that beginning in November 1997. Troxler set up a complex series of sham offshore entities in the Turks & Caicos Islands for himself and his clients. Troxler also steered his clients to accountants who prepared fraudulent returns. Troxler's efforts to evade his own taxes, and assist his clients in the evasion of their taxes, involved using offshore entities to make it appear as if Troxler and his clients had transferred their interests in their businesses to the offshore entities to make the income earned appear to be foreign-earned. According to the indictment, Troxler and his clients retained full control over their assets, businesses, and income earned from them, and the income was taxable and should have been reported on their respective federal individual and business income tax returns.

The indictment also alleges that sometime between August 30 and November 8, 2002, Troxler sent a series of letters to an IRS Special Agent and a former IRS Commissioner. In those letters, Troxler wrote that (1) he was not a U.S. citizen; (2) he is a child of God and, therefore,

* * *

APPENDIX G

United States District Court

NORTHERN JUDICIAL DISTRICT OF TEXAS

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)
One Galleria Tower, Fifth Floor, Suite 500
13355 Noel Road
Dallas, Texas
(more particularly described in Attachment A)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:
3-02-192MJ

(FILED JUN. 26, 2002)

I Daniel Williams being duly sworn depose and say:
Special Agent, Criminal Investigation
I am a(n) Internal Revenue Service, U.S. Treasury
(Official Title) and have reason to believe
that ☐on the person of or ☒on the property or premises known as (name, description and/or location)
See Attachment A

in the Judicial District of Northern Judicial District of Texas there is now concealed certain property, namely
See Attachment B

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

Property that constitutes evidence of the commission of a criminal offense concerning a violation of Title 26 United States code, Section(s) 7201, 7206(1), 7206(2), 7212
The facts to support a finding of Probable Cause are as follows:

See attached affidavit

Continued on the attached sheet and made a part hereof.
☒ Yes ☐ No

/s/ Daniel Williams
Signature of Affiant

Sworn to before me, and subscribed in my presence

June 26, 2002 at Dallas, TX
Date City and State

United States Magistrate Judge Wm. F. Sanderson, Jr.
Name and Title of Judicial Officer Signature of Judicial Officer

* * *

Based on my training and experience, I also know that:

a. It is an established principle of federal tax law that income is taxed to the person who earns and enjoys and/or directs the use of such income. Federal court cases have consistently held that arrangements involving sham transactions intended to assign income purely for the purpose of evading federal income taxes are unlawful.

b. Individuals involved in conspiracies to defeat or obstruct the IRS often conduct transactions in countries they know to be "tax havens," or in countries they know to have strict bank secrecy laws. Such individuals often carry out all or part of their schemes in countries that they know will not provide evidence of tax crimes and banking transactions to IRS special agents. This investigation has revealed that TROXLER made

statements to IRS undercover agents indicating that he conducts parts of his operation in the Turks and Caicos Islands (TCI), because he considers that country to be beyond the reach of the IRS.

c. Individuals involved in conspiracies to defeat or obstruct the IRS often utilize a network of domestic and offshore entities, including domestic shell corporations and partnerships, offshore trusts, foreign shell corporations, and foreign bank accounts, to conceal income and to disguise the source, ownership, and/or control of assets. This investigation has revealed that TROXLER and Faulk's clients have transferred funds through domestic entities into offshore corporations and other offshore entities, and that these offshore entities are set up to facilitate the transfer of client income offshore, and to take tax deductions that are not otherwise allowable.

d. Individuals involved in conspiracies to defeat or obstruct the IRS have traditionally utilized false loan transactions, and false invoices to generate artificial business losses, which they and/or their clients fraudulently deduct on their income tax returns. Perpetrators of such illegal schemes frequently create artificial transactions between related business entities to create losses. Individuals involved in conspiracies to defeat or obstruct the IRS often take steps to avoid detection by adding layers to the scheme in order to purposely complicate the matter. This is done to prevent or thwart attempts to investigate the conspiracy, by making it difficult or impossible to trace the true

nature, location, ownership, and/or control of funds involved in the conspiracy. This investigation has revealed that TROXLER and his business associates utilize a series of domestic and offshore entities, and bank accounts to disguise and divert client income to TCI, for the duel purposes of evading federal income taxes, and obscuring the true ownership of the diverted funds when the funds are repatriated back into the United States.

* * *

Business Entity	1997	1998	1999	2000
Trust Management Services	Marsha Troxler	Global Financial Services (100%)	Global Financial Services (99%) Global Economic Development (1%)	Global Financial Services (99%) Global Economic Development (1%)
TROXLER Insurance Agency	TROXLER	Global Financial Services (100%)	Global Financial Services (99%) Global Economic Development (1%)	Global Financial Services (99%) Global Economic Development (1%)
Contingent Liability Services	TROXLER	Global Financial Services (100%)	Global Financial Services (99%) Global Economic Development (1%)	Global Financial Services (99%) Global Economic Development (1%)
TROXLER Financial Services	TROXLER	Global Financial Services (100%)	Global Financial Services (99%) Global Economic Development (1%)	Global Financial Services (99%) Global Economic Development (1%)
ReSecurity First Legal Assoc.	Don Ballard	Don Ballard (100%)	ReSecurity First Legal Assoc. International (99%) Global Economic Development (1%)	ReSecurity First Legal Assoc. International (99%) Global Economic Development (1%)
TROXLER Advisory Services	None Filed	TROXLER Financial Services (100%)	TROXLER Financial Services (99%) Global Economic Development (1%)	TROXLER Financial Services (99%) Global Economic Development (1%)